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**BEFORE THE  
RESPIRATORY CARE BOARD  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the Petition to Revoke Probation  
and Accusation Against:

RICHARD ANTHONY SPRAGUE, R.C.P.  
6153 Horton Drive  
La Mesa, CA 91942

Respiratory Care Practitioner License  
No. 19625

Respondent.

Case No. D1-2007-480

**DEFAULT DECISION  
AND ORDER**

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about February 26, 2009, Complainant Stephanie Nunez, in her official capacity as the Executive Officer of the Respiratory Care Board, Department of Consumer Affairs (Board), filed Petition to Revoke Probation and Accusation No. D1-2007-480 against Richard Anthony Sprague, R.C.P. (Respondent).

2. On or about September 2, 1997, the Board issued Respiratory Care Practitioner License No. 19625 to Richard Anthony Sprague (Respondent). The license was in effect at all times relevant to the charges brought herein, and will expire on August 31, 2009, unless renewed.

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1           3.       In Board Decision No. 1H-2007-480, an Accusation against Richard Sprague, the  
2 Board revoked Respondent's license, effective October 6, 2008. However, the revocation was  
3 stayed and Respondent's license was placed on probation for a period of two (2) years with  
4 probationary conditions.

5           4.       On February 26, 2009, Andrea Pina, an employee of the Respiratory Care Board,  
6 served by certified and first class mail a copy of the Petition to Revoke Probation and Accusation  
7 No. D1-2007-480, Statement to Respondent, Notice of Defense, Request for Discovery, and  
8 Government Code sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record  
9 with the Board, which was 6153 Horton Drive, La Mesa, California 91942. A copy of that  
10 pleading, the related documents, and Declaration of Service are attached as Exhibit 1, and are  
11 incorporated herein by reference.

12           5.       Service of the Petition to Revoke Probation and Accusation was effective as a  
13 matter of law under the provisions of Government Code section 11505, subdivision (c).

14           6.       On or about March 5, 2009, the postal receipt green card for the certified mailing  
15 was returned to the Respiratory Care Board, showing delivery and receipt of the document on  
16 February 28, 2009. A copy of that document is attached as Exhibit 2 and incorporated herein by  
17 reference.

18           7.       On March 13, 2009, at approximately 4:20 p.m., Respondent called the Office of  
19 the Attorney General and spoke to Elsa Beas-Valdez, secretary to Deputy Attorney General  
20 Susan Fitzgerald. He identified himself as Richard Sprague. Without telling Ms. Beas-Valdez  
21 anything about what he had received, he told her that he wanted to request an extension of time  
22 to find an attorney; that he only had ten days; and that he did not want to surpass any deadline  
23 since he just received notification "nine days ago." He claimed mis-delivery of what he received.  
24 He told her he would fax his request to Deputy Attorney General Fitzgerald at (619) 645-2061  
25 when he got to work that evening. The (619) 645-2061 number is the correct fax number for Ms.  
26 Fitzgerald. Ms. Beas-Valdez told Mr. Sprague to go ahead and send the fax. She told him that  
27 Ms. Fitzgerald would not get any fax until Monday, but never suggested or implied to him that he  
28 should delay faxing his request until later in the weekend or on Monday. (Declaration of Elsa

1 Beas-Valdez, attached as Exhibit 3 and incorporated herein by reference.

2 8. Respondent did not fax a Notice of Defense until approximately 2:26 p.m. on  
3 Monday, March 16, 2009. The original of the Notice of Defense was received on March 18,  
4 2009, postmarked March 16, 2009. (Declaration of Susan Fitzgerald, Deputy Attorney General  
5 and attachments, attached as Exhibit 4 and incorporated herein by reference.

6 9. Shortly before the faxed Notice of Defense was received, Respondent phoned and  
7 spoke with Deputy Attorney General Fitzgerald. During the course of the conversation, Respon-  
8 dent changed his story about the Petition and Accusation being mis-delivered when Ms.  
9 Fitzgerald told him she had a copy of the signed-for postal green card, showing receipt at his  
10 address of record on February 28. Respondent also said that Ms. Fitzgerald's secretary had  
11 suggested or implied that it was acceptable for him to file the Notice of Defense over the  
12 weekend or on Monday, since Ms. Fitzgerald would not see it until Monday, March 16.  
13 Respondent acknowledged to Ms. Fitzgerald his statement the previous Friday to Ms.  
14 Fitzgerald's secretary that he had only had the Petition and Accusation package for 9 days.  
15 When Ms. Fitzgerald pointed out to Respondent during their phone conversation on March 16  
16 that 9 days before March 13 would be March 4, 2009, plenty of time to file a Notice of Defense,  
17 Respondent had no answer as to why he did not timely file a Notice of Defense, except to say he  
18 thought he had 10 days from receiving the package and that he figured that if Ms. Fitzgerald  
19 would not receive the Notice of Defense until Monday, March 16, 2009, he could actually wait  
20 until then to file it by fax. (Exhibit 4.)

21 10. Government Code section 11505 states, in pertinent part:

22 " . . . .

23 "(b) The statement to respondent shall be substantially in the following form:

24 Unless a written request for a hearing signed by or on behalf of the person  
25 named as respondent in the accompanying accusation is delivered or mailed to the  
26 agency within 15 days after the accusation was personally served on you or mailed  
27 to you (here insert name of agency) may proceed upon the accusation without a  
28 hearing. . . .

1       “(c) The accusation and all accompanying information may be sent to the respondent  
2       by any means selected by the agency. But no order adversely affecting the rights of  
3       the respondent shall be made by the agency in any case unless the respondent  
4       shall have been served personally or by registered mail, as provided herein. . .  
5       Service shall be provided in the manner authorized in civil actions. Service  
6       by registered mail shall be effective if a statute or agency rule requires the  
7       respondent to file the respondent’s address with the agency and to notify the  
8       agency of any change, and if the registered letter containing the accusation and  
9       accompanying material is mailed, addressed to the respondent at the latest  
10      address on file with the agency.” (Emphasis added.)

11      11. Government Code section 11506 states, in pertinent part:

12      “(a) Within 15 days after service of the accusation the respondent may file with the  
13      agency a notice of defense . . .

14      “....

15      “(c) . . . Failure to file a notice of defense shall constitute a waiver of respondent's right  
16      to a hearing, but the agency in its discretion may nevertheless grant a hearing.”

17      12. Respondent failed to timely file a Notice of Defense within 15 days after service  
18      upon him of the Petition to Revoke Probation and Accusation, regardless of whether the 15 days  
19      are counted as starting on February 26, 2009 (the date of mailing to him of the Petition and  
20      Accusation) or on February 28, 2009 (the date the Petition and Accusation were signed for at  
21      Respondent’s address of record). Respondent has, therefore, waived his right to a hearing on the  
22      merits of Petition to Revoke Probation and Accusation No. D1-2007-480.

23      13. California Government Code section 11520 states, in pertinent part:

24      “(a) If the respondent either fails to file a notice of defense or to appear at the hearing,  
25      the agency may take action based upon the respondent's express admissions or upon other  
26      evidence and affidavits may be used as evidence without any notice to respondent.”

27      14. Pursuant to its authority under Government Code section 11520, the Board finds  
28      Respondent is in default. The Board will take action without further hearing and, based on

Respondent's express admissions by way of default and the evidence before it, contained in exhibits 1 through 4, finds that the allegations and charges in Petition to Revoke and Accusation No. D1-2007-480 are true.

#### DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Richard Anthony Sprague has subjected his respiratory care practitioner license to outright revocation.

2. A copy of the Petition to Revoke Probation and Accusation and the related documents and Declaration of Service are attached.

3. The agency has jurisdiction to adjudicate this case by default.

4. The Board of Respiratory Care is authorized to revoke Respondent's respiratory care practitioner's license based upon the following violations alleged in the Petition to Revoke Probation and Accusation: failure to comply with the following probationary conditions:

A. Biological Fluid Testing - Probationary Condition #3;

B. Abstention from Any and All Mood Altering Substances - Probationary Condition #4;

C. Assure Filing of Supervisor Quarterly Report - Probationary Condition #6;

D. Comply With Probation Monitoring Costs - Probationary Condition #10;

E. Comply with Cost Recovery - Probationary Condition #15;

F. File Timely Quarterly Report - Probationary Condition #8.

5. Cost recovery in this Petition to Revoke Probation and Accusation, pursuant to Business & Professions Code section 3753.5, for which Respondent is responsible, is determined to be \$3,634.00, as established by the Certification of Prosecution Costs: Declaration of Susan Fitzgerald, attached hereto as Exhibit 5.

#### ORDER

IT IS SO ORDERED that the revocation that was stayed in Board decision IH-2007-480 is hereby set aside and Respiratory Care Practitioner license no. 19625, heretofore issued to Respondent Richard Anthony Sprague, R.C.P., is revoked outright.

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1 Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a  
2 written motion requesting that the Decision be vacated and stating the grounds relied on within  
3 seven (7) days after service of the Decision on Respondent. The agency in its discretion may  
4 vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

5 This Decision shall become effective on June 3, 2009.

6 It is so ORDERED May 5, 2009

7  
8 Original signed by: \_\_\_\_\_

9 LARRY L. RENNER, BS, RRT, RCP, RPFT  
10 PRESIDENT, RESPIRATORY CARE BOARD  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

11 Attachments:

- 12 Exhibit 1: Petition to Revoke Probation and Accusation No.D1-2007-480, related  
13 documents, and Declaration of Service  
14 Exhibit 2: Postal Return Document  
15 Exhibit 3: Declaration of Elsa Beas-Valdez  
16 Exhibit 4: Declaration of Susan Fitzgerald with 2 attachments  
17 Exhibit 5: Certification of Prosecution Costs: Declaration of Susan Fitzgerald with 1  
18 attachment  
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